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IN THE

Supreme Court of the United States

QUANTA COMPUTER, INC., QUANTA COMPUTER USA, INC., Q-LITY COMPUTER, INC., COMPAL ELECTRONICS, INC., BIZCOM ELECTRONICS, INC., SCEPTRE TECHNOLOGIES, INC., FIRST INTERNATIONAL COMPUTER, INC. and FIRST INTERNATIONAL COMPUTER OF AMERICA, INC.,

Petitioners,

—v.—

LG ELECTRONICS, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF OF MINEBEA CO., LTD. AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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IDENTITY AND INTEREST OF AMICUS CURIAE

Upon consent of the parties,[1] amicus curiae Minebea Co. Ltd., ("Minebea") submits this brief in support of the position of Petitioners. Minebea manufactures, distributes and sells a large range of industrial and electronic products and components into the stream of commerce and is the owner of a significant number of United States patents. Minebea has a direct interest in this appeal based on its role in a lawsuit entitled *Minebea Co., Ltd. v. Papst*, Civil Action No. 97-0590, which was tried before the Honorable Paul F. Friedman, United States District Court Judge for the District of Columbia. In an Opinion, Findings of Fact and Conclusions of Law, dated August 17, 2006, Judge Friedman ruled on the basis of the Federal Circuit's *LGE*[2] decision that a patent license agreement under which Minebea was fully authorized by the patent owner to sell its products did not result in exhaustion. Relying on *LGE*, Judge Friedman ruled that a no sub-license provision in the license created an "implied condition" on Minebea's sales despite the fact that there was no notice provided or required. *Minebea Co., Ltd. v. Papst*, 444 F.Supp.2d 68, 159 (D.D.C. 2006). As a licensor, a licensee, a manufacturer and a litigant, Minebea has an interest in helping to ensure that the patent system operates in a manner which is predictable, fair and consistent with Congressional mandates and opinions of this Court.

[1] Letters evidencing the consent of the parties are being filed currently with the Clerk of the Court.

[2] *LG Elecs., Inc. v. Bizcom Elecs., Inc.*, 453 F.3d 1364 (Fed. Cir. 2006) ("*LGE*").

SUMMARY OF THE ARGUMENT

As recognized by this Court, the patent system must reconcile two fundamental competing interests. On the one hand, it must provide meaningful incentives to innovation in keeping with the constitutional mandate of promoting the progress of the useful arts. (U.S. Const. art. I, § 8 cl. 8). On the other hand, this Court has long recognized that overexpansion of private patent monopolies must be prevented so that benefits to innovation derived through the free market process of open competition are not sacrificed. For over one hundred years, this Court has recognized the first sale doctrine as a basic limitation on the rights granted under a patent in order to ensure that patent owners do not suppress competition through the control of patented goods after an authorized first sale.

The first sale doctrine provides that once a patentee has authorized the sale into commerce of any article which practices his invention or embodies the "essential features"[3] of his invention, the patent is exhausted. After this authorized first sale, the article is "emancipated"[4] from the subjugation of the patent, and continues thereafter through the stream of commerce in the same manner as any unpatented article, free of the patent owner's exclusionary rights or control. This first sale doctrine is so deeply embedded in the patent laws of this Nation that it has been described by this Court as necessary to prevent "inconvenience and annoyance to the public . . . too obvious to require illustration." *Keeler* at 654.

Since the time that the first sale doctrine was first articulated in *Adams v. Burke*, 84 U.S. (17 Wall.) 453

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[3] *United States v. Univis Lens Co.*, 316 U.S. 241, 251 (1942).

[4] *Keeler v. Standard Folding Bed Co.*, 157 U.S. 659, 654 (1895).

(1873), patent owners have presented arguments and devised licensing strategies in an attempt to circumvent the inherent and necessary limitation on their power that it imposes. In each instance, those efforts have been rejected by this Court. As many of the cases in this rich history make clear, the first sale doctrine acts as an immutable limitation on the power of a patent owner to control the disposition or sale of an article after a first authorized sale that cannot be undone through express disclaimers or by requiring that each licensee in the chain send a "notice" to subsequent purchasers of the article that no license is implied.

Of particular note is this Court's decision in *Univis*. That case stands on all fours with the salient facts in *LGE* and prohibited the very conduct in which LGE is now free to engage. Indeed, in *Univis*, this Court expressly rejected the patentee's argument that express disclaimers constitute "conditional licenses" which do not trigger the exhaustion doctrine. *Univis* at 245.[5] Yet the Federal Circuit's opinion completely ignores that landmark decision, apparently on the grounds that it is "an antitrust case,"[6] and fails to even once mention

[5] Counsel for Univis Lens argued that "[t]he supply by the wholesaler grinder of a ground or partly ground lens under a restrictive license to a prescription licensee does not release the article from the patent monopoly. These are valid restrictive licenses limited to different fields." *Univis* at 245.

[6] At oral argument before the Federal Circuit, the following exchange occurred between counsel for Quanta and Judge Newman:

> Quanta's Counsel: We would urge upon this Court a construction of exhaustion that looks to the Constitution in the first place, Article I, Section 1, Clause 8 because in the *Univis* case the Supreme Court looked particularly to that portion of the Constitution and said there is a bundle of rights given to patentees and that bundle of rights includes making, using and vending and the suggestion is that the full extent of that patentees

Univis. Conversely, the district court relied heavily on *Univis* in finding exhaustion did apply in the face of LGE's licensing scheme. By ignoring the teachings of *Univis* as well as other exhaustion decisions of this Court, the Federal Circuit has authorized LGE to control the first sale of an article (the sale of microprocessors by Intel to its customers), as LGE is entitled under the patent laws, as well as a subsequent use and sale (the sale by the computer makers to the public)—in direct violation of the first sale doctrine.

The Federal Circuit's decision will have a deleterious effect on competition throughout the economy. Patent owners will now be permitted to extract a "patent tax" at each stage of the manufacture, assembly, importation, sale and use of an individual patented article. As technology becomes increasingly complex, products such as automobiles, computers, televisions, etc. are comprised of many hundreds or thousands of subcomponents. If each of these components can be "taxed" multiple times by an individual patent owner each time a component is combined with another component to make a sub-assembly or complete a product, the patent system will become seriously out of balance.

The corporations or other entities that own patents directed to each individual component will be able to

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rights end there, so once there is a vending under operation of the Constitution vending the rights are exhausted so we think that exhaustion.

Judge Newman: No but we know that it's not that broad. We know that there is freedom of contract we know that *Univis* was an antitrust resale price control case primarily not a matter of saying that there is an absolute right for everyone to use for every purpose anything that they acquire on the market so we know that that's not the case.

(A recording of the argument before the Federal Circuit was procured from the clerk of the Federal Circuit.)

reap a reward when they authorize the manufacture and sale of the component itself. Each patentee will then be authorized to reap a second reward when the component is combined with other components to create a useful product. An additional royalty could then be reaped when the completed article is sold to a distributor or store. And even a fifth royalty could be extracted when the product is eventually sold by a retailer or used by the public. At each successive stage in the manufacture and sale of the completed product, the patentee's demanded "reward" may actually go up based upon the successively enhanced price of the article as it progresses through the distribution chain.

ARGUMENT

I AN UNBROKEN LINE OF PRECEDENTS OF THIS COURT HAS HELD THAT AFTER THE FIRST AUTHORIZED SALE OF A PATENTED ARTICLE, FURTHER ATTEMPTS BY THE PATENTEE TO CONTROL ITS DISPOSITION OR SALE ARE VOID, AND THE ARTICLE TRAVELS THROUGH THE STREAM OF COMMERCE LIKE ANY OTHER STAPLE GOOD, FREE OF THE PATENT

The patent exhaustion doctrine was articulated by the Court over a century ago in *Adams*, widely regarded as the seminal case on this topic. Adams, the owner of a patent on coffin lids, granted rights to Lockhart to make, use, and sell patented coffin lids within a ten-mile radius from the center of Boston, Massachusetts. Burke, an undertaker, bought several coffins from Lockhart in Boston which included the coffin lids that Lockhart was authorized to sell. Burke then used the coffins in Natick, Massachusetts, seventeen miles from Boston's center. Adams sued Burke for patent infringement. This Court

affirmed the district court's dismissal of the patentee's infringement case against Burke as follows:

> In the essential nature of things, when the patentee, or the person having his rights, sells a machine or instrument whose sole value is its use, he receives the consideration for its use and he parts with the right to restrict that use. The article, in the language of the court, passes without the limit of the monopoly. That is to say, the patentee or his assignee having in the act of sale received all the royalty or consideration which he claims for the use of his invention in that particular machine or instrument, it is open to the use of the purchaser without further restriction on account of the monopoly of the patentees.

Adams at 456.

Thus, *Adams*, as well as the subsequent exhaustion decisions by this Court make clear that exhaustion acts as an inherent and strict limitation on the power of the patentee to control a patented article after a first sale. This limitation applies even where, as in *Adams*, the subsequent use or disposition was something that the licensee itself was not authorized to do, so long as the licensee's sale itself was authorized and unconditional. As stated by Chief Justice Taney in *Bloomer v. McQuewan*, 55 U.S. (14 How.) 539, 549 (1852) when the patented article "passes to the hands of the purchaser, it is no longer within the limits of the monopoly. It passes outside of it, and is no longer under the protection of the act of Congress."[7]

[7] *Mitchell v. Hawley*, 83 U.S. 544 (1873) is not to the contrary. Although in *Mitchell*, a post sale restriction was found to be permissible, the licensee in *Mitchell* did not have authority to sell and therefore there was no authorized first sale to trigger exhaustion. *See General Talking Pictures Corp. v. Western Electric Co.*, 305 U.S. 124, 128 n.1 (1938) ("It is significant that in the Hawley Case the patentee never licensed or transferred his exclusive right to sell; and the

The patent exhaustion doctrine was last squarely addressed by this Court in *Univis*, which again reiterates this Court's unyielding principle that exhaustion acts to limit the power of a patentee to control the disposition of a patented article after the first sale as follows:

> Our decisions have uniformly recognized that the purpose of the patent law is fulfilled with respect to any particular article when the patentee has received his reward for the use of his invention by the sale of the article, and that once that purpose is realized the patent law affords no basis for restraining the use and enjoyment of the thing sold. *Adams v. Burke*, supra, page 456; *Keeler v. Standard Folding Bed Co.*, 157 U.S. 659; *Motion Picture Co. v. Universal Film Co.*, 243 U.S. 502; and see cases collected in *General Talking Pictures Corp. v. Western Electric Co.*, 305 U.S. 124, 128, n.1.

Univis at 251.

In *Univis*, the patentee, Univis Corp., held a patent having claims directed to an eyeglass lens and the method for making the lens by producing, grinding and polishing lens blanks. *Univis* at 243. Univis Corp. licensed its related company, Univis Lens, to manufacture lens blanks. Univis Lens sold those licensed blanks to wholesalers and retailers. *Univis* at 244-45. After purchasing the Univis Lens blanks, these wholesalers and retailers would finish the grinding and polishing of the lens blanks through practice of the Univis Corp.'s method patent. *Id.*

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license conveyed only 'the exclusive right to make and use' and to license to others the right to use . . . .' 16 Wall. at page 548, 21 L.Ed. 322. That case, therefore, does not justify the judgment here where the patentee's power to vend was both transferred and exercised.") (Black, H., dissenting) (emphasis added).

The licenses to the wholesalers and retailers contained strict disclaimers and limitations on the rights granted by Univis Corp. to the individual licensees. One of the main issues before this Court was whether the patent laws permitted a patentee to prevent a purchaser of a licensed product (the lens blanks) from engaging in the steps necessary to complete and sell the finished product. In addressing the patent owner's ability under the patent laws to exercise control over a product after a first sale, this Court held:

> We think that . . . where one has sold an uncompleted article which, because it embodies essential features of his patented invention, is within the protection of his patent, and has destined the article to be finished by the purchaser in conformity with the patent, he has sold his invention so far as it is or may be embodied in that particular article.

Univis at 250-51.

Accordingly, this Court held that since the unfinished lens blanks were sold under license from Univis Corp., and since the blanks had no use except in practice of Univis Corp.'s patent, the patent rights with respect to the lens blanks and their use as a finished product were exhausted on sale:

> [T]he authorized sale of an article which is capable of use only in practicing the patent is a relinquishment of the patent monopoly with respect to the article sold.

Univis at 249.

II THE FEDERAL CIRCUIT'S DECISION TO ALLOW LGE TO EXERCISE CONTROL OVER THE USE OR RESALE OF THE PATENTED ARTICLE FOLLOWING ITS FIRST AUTHORIZED SALE, VIOLATES THE FIRST SALE DOCTRINE

A. The Federal Circuit's Decision Is Inconsistent With This Court's Exhaustion Decisions, Particularly Its Landmark Decision In *Univis* And Thereby Thwarts Vital Safeguards Built Into The Patent Law

The facts regarding LGE's licensing scheme are not in dispute. LGE has acquired patents that are directed to certain microprocessors in combination with generic components such as busses and memory. (Petr.'s Br. 1). LGE then licensed the LGE patents to Intel under the LGE-Intel license under which "Intel was free to sell its microprocessors and chipsets."[8] The microprocessors that Intel has been authorized to sell to its customers embody the essential features of the LGE patents since the district court determined that the Intel microprocessors have no non-infringing use. *Id.* at 39. After authorizing Intel to manufacture and sell microprocessors in exchange for royalty payments, LGE then demanded an additional royalty from Intel's customers when the Intel microprocessors they had purchased were combined with busses and memory to create useful devices that were then sold to the public in computers. (Petr.'s Br. 3).

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[8] "(LGE-Intel License) §§ 1.13, 1.6, 1.24 (chipsets and microprocessors are Intel Licensed Products within the meaning of the agreement). The [LGE-Intel] License authorizes Intel to 'make, use, sell (directly or indirectly), offer to sell, import and otherwise dispose of all Intel Licensed products'." *LG Electronics, Inc. v. Asustek Computer, Inc.*, No. 01-326, 2002 U.S. Dist. LEXIS 25956, at *12; 65 U.S.P.Q.2D (BNA) 1589 (D. N.Cal. Aug. 20, 2002).

The Federal Circuit's decision permits LGE to accomplish that which courts for over one hundred years have steadfastly maintained cannot be done: to exercise control over a patented article after its first authorized sale. The licensing scheme that this Court condemned in *Univis* as an unlawful extension of the patent laws is indistinguishable from the LGE licensing scheme.

In *Univis*, the patents at issue covered lens blanks as well as the steps of grinding and finishing them into prescription lenses. In *LGE*, the patents at issue cover microprocessors or chipsets in combination with "generic" components such as busses or memory. In *Univis*, Univis Corp. licensed Univis Lens to manufacture lens blanks. Here, LGE licensed Intel to manufacture and sell microprocessors and chipsets. In *Univis*, the lens blanks had no commercial use, other than to be ground and finished into prescription spectacles. In *LGE*, the microprocessors and chipsets that Intel was licensed by LGE to manufacture and sell had no use other than to be combined with busses or memory to create a useful device. In *Univis*, the restricted license agreements granted by Univis Corp. to both finishing wholesalers and grinding retailers explicitly disclaimed that any license rights were being transferred based upon their purchase of lens blanks. *Univis* at 245.[9] In *LGE*, the LGE-Intel license disclaims any license rights being transferred to Intel's customers, the computer makers. In *Univis*, each successive licensee in the manufacture, grinding, finishing and sale of lens blanks well understood that they purportedly needed to obtain a separate license from Univis Corp. with respect to the patented

[9] "All the licenses to wholesalers and retailers recite the Corporation's ownership of the lens patents and purport to confer on the licensee the privilege of selling the patented invention in the manner and to the extent stated." *Univis* at 245.

articles they had purchased. *Univis*, at 244-245. Here, LGE required that Intel notify its customers of the limited scope of the license. Thus, the parallelism between Univis Corp.'s licensing scheme and the LGE licensing scheme are obvious and compelling.

In *Univis*, this Court struck down Univis Corp.'s licensing scheme as an impermissible attempt to extend the patent laws beyond their Congressionally intended purpose. In so finding, this Court built on earlier cases articulating its long held view that the doctrine of patent exhaustion acts as a substantive limit on the power conferred by a patent:

> In construing and applying the patent law so as to give effect to the public policy which limits the granted monopoly strictly to the terms of the statutory grant, *Morton Salt Co. v. G. S. Suppiger Co.*, 314 U.S. 488, the particular form or method by which the monopoly is sought to be extended is immaterial. The first vending of any article manufactured under a patent puts the article beyond the reach of the monopoly which that patent confers. Whether the licensee sells the patented article in its completed form or sells it before completion for the purpose of enabling the buyer to finish and sell it, he has equally parted with the article, and made it the vehicle for transferring to the buyer ownership of the invention with respect to that article.

Univis at 251-252.

At the very heart of this decision lies the principle that any conditions imposed by the patentee on its licensees that would operate to extend the power of a patent beyond a first unconditional and authorized vending of a patented article are invalid. Clearly, the explicit license disclaimers and notice required by LGE constitute yet

another "particular form or method by which the monopoly is sought to be extended" beyond the first vending of any article manufactured under a patent. *Univis* at 251. Under this Court's precedents, these "restrictions" have no effect on the first sale doctrine.[10]

Yet, under the Federal Circuit's decision, they constitute "conditional licenses" which render the first sale doctrine inapplicable. The Federal Circuit has thus turned the law on its head, and it is therefore critically important to the health and vitality of our economy that the petition for a writ of certiorari be accepted so that the Federal Circuit's decision can be reviewed.

B. This Court Has Already Addressed Whether Express Disclaimers And Notice Requirements Can Circumvent The Application Of The First Sale Doctrine

The Federal Circuit's ruling now holds that the limitations on a patent imposed by Congress and as illuminated in this Court's precedents can be easily circumvented through a notice requirement and explicit disclaimer. See *LGE* at 1376 ("The LGE-Intel license expressly disclaims granting a license allowing computer system manufacturers to combine Intel's licensed parts with other non-Intel components. Moreover, this conditional agreement required Intel to notify its customers of the limited scope of the license, which it did."). In so hold-

[10] Indeed, notice concerning the absence of a license is inapposite to exhaustion since, if the patent is exhausted and the article is therefore "without the limit of the monopoly" (*Adams* at 456), no license by a purchaser or user is needed. This is recognized in the LGE-Intel License which preserves the applicability of the exhaustion doctrine. Brief for Plaintiff-Appellant at 7, *LGE* (No. 05-1261).

ing, the Federal Circuit has ignored prior decisions of this Court which have already addressed this issue.[11]

This Court's first case to address the issue of whether knowledge or intent on the part of the defendant could alter application of the exhaustion rule as enunciated in *Adams* was *Hobbie v. Jennison*, 149 U.S. 355 (1893). In that case, a licensee for the state of Michigan, Jennison, sold and delivered patented pipes for conveying gas water and other fluids knowing that they were to be used by the purchaser in the streets of Hartford Connecticut, a territory which was not licensed to Jennison. An attempt was then made to distinguish the case from

[11] The Federal Circuit has also ignored its own prior precedent recognizing that a restriction on sub-licensing is immaterial to whether or not exhaustion applies. In *Intel v. ULSI Sys. Tech., Inc.*, 995 F.2d 1566 (Fed. Cir. 1993), HP was licensed by Intel to sell math co-processor chips. *Id.* at 1567. ULSI contracted with HP under a foundry arrangement for HP to manufacture and sell to ULSI math co-processors of ULSI's design. *Id.* Intel sued ULSI for infringement, and ULSI defended on grounds of exhaustion. *Id* at 1568. The Federal Circuit upheld the exhaustion defense stating "the law is well-settled that an authorized sale of a patented product places the product beyond the reach of the patent." *Id.* Intel argued that exhaustion did not apply because under its license with HP, HP did not have the "power to sublicense" and because the chips at issue were not of HP's design. *Id.* at 1569.

The Federal Circuit found that the sales by HP were within "the broad terms of the licensing agreement," stating "while Intel may not be pleased with the deal it made permitting HP to make unrestricted sales, it nevertheless granted HP that right in 1983, presumably for consideration it believed to be of value at that time. It cannot now renege on that grant to avoid its consequences." *Id.* Further "the sale by HP to ULSI here did not create a sublicense. . . . HP did not grant a sublicense; it sold a product, albeit one designed by its purchaser. ULSI is immune from infringement not because it was a sublicensee, which it was not, but because HP was licensed and therefore a legitimate source of the chips." *Id.* at 1569-70. The Federal Circuit does not discuss or distinguish this prior precedent in its *LGE* decision.

Adams on the grounds that the sale was made with the knowledge and intention on the part of the defendant that the use would be at Hartford. This argument was soundly rejected by this Court which held that "neither the actual use of the pipes in Connecticut, or a knowledge on the part of the defendant that they were intended to be used there, can make him liable." *Hobbie* at 363.

Keeler was yet another case in which the patentee argued that the fact that the seller, a licensee under the patent, knew that its customer intended to use the goods in the territory of another. This Court again held that neither the seller's nor the purchaser's knowledge or intent was relevant to the application of the exhaustion doctrine as follows: "it is competent for one to sell the patented articles to persons who intend, with the knowledge of the vendor, to take them for use into the territory of the other." *Id.* at 666. Instead, this Court based its decision on the underlying principle of patent exhaustion that "a purchaser of an article made under the patent . . . by one authorized by the patentee to sell it, emancipates such article from any further subjection to the patent." Thus, since knowledge or intent by the licensee or its customer are irrelevant, a notice requirement cannot effect the application of the first sale doctrine.

The issue of whether express disclaimers can affect the application of the first sale doctrine has also been addressed and rejected by this Court. In fact, in *Univis* each of the separate lic[illegible]greements between Univis Corp. and the lens [illegible]anufacturers, the lens wholesalers, and the grinding and finishing retailers recited Univis Corp.'s ownership of the lens patents along with an express disclaimer that the particular license granted anything more than "the privilege of selling the patented invention in the manner and to the extent stated." *Univis* at 245. Yet this express disclaimer limiting the nature and scope of the license to the spe-

cific acts permitted in the license, did not curtail application of the first sale doctrine to Univis Corp.'s licensing scheme.

C. The Federal Circuit's Decision Has Had Such A Damaging Effect On This Court's Precedents That It Has Resulted In a District Court Finding Of No Exhaustion Based Upon "Implied Conditions" With No "Notice" Requirement

The Federal Circuit's *LGE* decision has created a dangerous expansion of the rights granted under a patent monopoly. Worse yet, the Federal Circuit decision has created ambiguity in the law that has already been exploited by at least one patent owner to erode the first sale doctrine even further. In *Minebea*, the patentee (Pap[illegible]) authorized its licensee (Minebea) to manufacture and sell products to its customers that would contributorily infringe (i.e., embody the essential features) of the patents in suit. Although the license agreement included a no sub-license provision, there was no requirement that Minebea provide any notice to its customers regarding the nature or extent of its license. There was no dispute that Minebea was acting within the scope of its authority in selling its products to its customers, without restriction.

Relying principally on this Court's *Univis* decision, the district court initially held in a June 24, 2005, Patent Exhaustion Opinion, 374 F.Supp.2d 202 (D.D.C. 2005), that Minebea's sales were unconditional within the meaning of the patent exhaustion doctrine. Then, after the Federal Circuit issued its *LGE* opinion, the district court reversed course, as follows:

> In view of the [Federal Circuit's *LGE*] holding, the Court finds that Minebea's sales of HDD spindle

> motors to its customers to have been conditional and therefore non-exhausting. The facts of *LGE* are analytically almost indistinguishable from those here. The only salient difference is that in *LGE*, the licensing agreement between the patent holder and the manufacturer/seller not only disclaimed a grant of sublicenses to the manufacturer/seller's customers, but also required the manufacturer/seller to notify its customer of the fact (which it did). There was no such notice requirement in the Papst/ Minebea licensing agreements. Although the Federal Circuit's *LGE* opinion may be open to interpretation on this point, in this Court's judgment the decision in *LGE* turned on the existence of an express disclaimer of sublicenses, *not* on the presence or absence of a notice requirement; it is the former, not the latter, that determines whether an authorized sale is conditional or unconditional. (emphasis in original)

Minebea, 444 F.Supp.2d at 159.

Accordingly, as now interpreted by at least one district court, it is sufficient for a patentee to avoid the limitation on the control of a patented article after a first sale merely by indicating in the license agreement between it and the manufacturer that no sublicense to downstream purchasers or users is granted. There is no requirement even that notice to the purchasers or users be provided. This is precisely the type of "inconvenience and annoyance to the public" that this Court described in *Keeler* as "too obvious to require illustration." *Keeler* at 667.

III. CONCLUSION

The petition for a writ of certiorari to the United States Court of Appeals for the Federal Circuit should be granted.

Respectfully submitted,

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